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# SENATE BILL No. 51

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 34-6-2; IC 34-30-23; IC 34-51-2-20; IC 35-41-3-2.

**Synopsis:** Defense of property and self-defense. Provides that a person who is in a place where the person has a right to be may use reasonable force against another person to protect the person or a third person from the imminent use of unlawful force. Provides that if a person commits a crime and is injured by the owner of the property or a motor vehicle where the crime occurred, while the crime was occurring, the person is barred from recovering damages arising from the property owner's use of force. Makes conforming amendments concerning rebuttable presumptions. Provides that a person who is justified in using force does not have a duty to retreat. Adds motor vehicles to the places in which a person can be justified in using reasonable force to prevent an unlawful attack.

**Effective:** July 1, 2006.

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**Nugent**

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January 9, 2006, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.

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Introduced

Second Regular Session 114th General Assembly (2006)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2005 Regular Session of the General Assembly.

## SENATE BILL No. 51

A BILL FOR AN ACT to amend the Indiana Code concerning civil procedure.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 34-6-2-21.5 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2006]: **Sec. 21.5. "Claimant", for purposes of IC 34-30-23 and**  
4 **IC 34-51-2-20, refers to a person who is injured while committing**  
5 **a felony or misdemeanor on the real property or in the motor**  
6 **vehicle of another person.**

7       SECTION 2. IC 34-6-2-21.6 IS ADDED TO THE INDIANA CODE  
8 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
9 1, 2006]: **Sec. 21.6. "Claimant's representative", for purposes of**  
10 **IC 34-30-23 and IC 34-51-2-20, includes a claimant's:**

- 11           (1) spouse;  
12           (2) child;  
13           (3) dependent; or  
14           (4) personal representative.

15       SECTION 3. IC 34-30-23 IS ADDED TO THE INDIANA CODE  
16 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
17 JULY 1, 2006]:

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**Chapter 23. Presumptions and Affirmative Defense in Wrongful  
Use of Force Actions**

**Sec. 1. This chapter applies to a:**

- (1) cause of action brought by a claimant or a claimant's representative; or
- (2) counterclaim made by a claimant or a claimant's representative.

**Sec. 2. In an action based on an intentional act of a defendant, if any part of an injury suffered by a claimant occurred while the claimant was committing a felony or misdemeanor and resulted from another person's use of force or deadly force while the claimant was on real property or in a motor vehicle owned, leased, or otherwise legally occupied by one (1) or more of the defendants:**

**(1) the finder of fact shall presume that:**

- (A) the claimant's conduct caused the injury; and
- (B) the claimant, in taking the first step toward the commission of the felony or misdemeanor, knowingly and voluntarily waived the claimant's and the claimant's representative's right to recover damages sustained by the claimant during the commission of the felony or misdemeanor; and

- (2) the claimant's conduct in committing the felony or misdemeanor bars any recovery by the claimant or the claimant's representative for damages arising from any defendant's use of force or deadly force.

**Sec. 3. A presumption under section 2(1) of this chapter is rebuttable.**

**SECTION 4. IC 34-51-2-20 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 20. (a) This section applies to a:**

- (1) cause of action brought by a claimant or a claimant's representative; or
- (2) counterclaim made by a claimant or a claimant's representative.

**(b) This section does not apply to a defendant's use of force or deadly force by means of a:**

- (1) deadly weapon (as defined in IC 35-41-1-8); or
- (2) device;

**that is automatically activated or used in a manner that does not require action of the defendant to fire or operate.**

**(c) In an action based on fault, if any part of an injury suffered by a claimant occurred while the claimant was committing a felony**

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or misdemeanor and resulted from another person's use of force or deadly force while the claimant was on real property or in a motor vehicle owned, leased, or otherwise legally occupied by one (1) or more of the defendants:

(1) the finder of fact shall presume that:

(A) the claimant's contributory fault is greater than the fault of all other persons whose fault proximately contributed to the claimant's damages; and

(B) the claimant, in taking the first step toward the commission of the felony or misdemeanor, knowingly and voluntarily waived the claimant's or the claimant's representative's right to recover damages sustained by the claimant during the commission of the felony or misdemeanor; and

(2) the claimant's conduct in committing the crime bars any recovery by the claimant or claimant's representative for damages arising from any defendant's use of force or deadly force.

(d) A presumption under subsection (c)(1) is rebuttable.

(e) If there is a claimant's representative, the finder of fact shall attribute a claimant's contributory fault under subsection (c)(1)(A) to the claimant's representative.

SECTION 5. IC 35-41-3-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 2. (a) A person, **who is in a place where the person has a right to be**, is justified in using reasonable force against another person to protect the person or a third person from what the person reasonably believes to be the imminent use of unlawful force. However, a person is justified in using deadly force only if the person reasonably believes that that force is necessary to prevent serious bodily injury to the person or a third person or the commission of a forcible felony. No person in this state shall be placed in legal jeopardy of any kind whatsoever for protecting the person or a third person by reasonable means necessary.

(b) A person is justified in using reasonable force, including deadly force, against another person if the person reasonably believes that the force is necessary to prevent or terminate the other person's unlawful entry of or attack on the person's:

(1) dwelling;

(2) **motor vehicle;** or

(3) ~~curtilage~~ **property around the dwelling.**

(c) With respect to property other than:

(1) a dwelling;

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1           **(2) a motor vehicle; or**

2           **(3) ~~curtilage~~, property around a dwelling;**

3 a person is justified in using reasonable force against another person if  
4 the person reasonably believes that the force is necessary to  
5 immediately prevent or terminate the other person's trespass on or  
6 criminal interference with property lawfully in the person's possession,  
7 lawfully in possession of a member of the person's immediate family,  
8 or belonging to a person whose property the person has authority to  
9 protect. However, a person is not justified in using deadly force unless  
10 that force is justified under subsection (a).

11       (d) A person is justified in using reasonable force, including deadly  
12 force, against another person if the person reasonably believes that the  
13 force is necessary to prevent or stop the other person from hijacking,  
14 attempting to hijack, or otherwise seizing or attempting to seize  
15 unlawful control of an aircraft in flight. For purposes of this subsection,  
16 an aircraft is considered to be in flight while the aircraft is:

17           (1) on the ground in Indiana:

18               (A) after the doors of the aircraft are closed for takeoff; and

19               (B) until the aircraft takes off;

20           (2) in the airspace above Indiana; or

21           (3) on the ground in Indiana:

22               (A) after the aircraft lands; and

23               (B) before the doors of the aircraft are opened after landing.

24       (e) Notwithstanding subsections (a), (b), and (c), a person is not  
25 justified in using force if:

26           (1) the person is committing or is escaping after the commission  
27 of a crime;

28           (2) the person provokes unlawful action by another person with  
29 intent to cause bodily injury to the other person; or

30           (3) the person has entered into combat with another person or is  
31 the initial aggressor unless the person withdraws from the  
32 encounter and communicates to the other person the intent to do  
33 so and the other person nevertheless continues or threatens to  
34 continue unlawful action.

35       (f) Notwithstanding subsection (d), a person is not justified in using  
36 force if the person:

37           (1) is committing, or is escaping after the commission of, a crime;

38           (2) provokes unlawful action by another person, with intent to  
39 cause bodily injury to the other person; or

40           (3) continues to combat another person after the other person  
41 withdraws from the encounter and communicates the other  
42 person's intent to stop hijacking, attempting to hijack, or

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1 otherwise seizing or attempting to seize unlawful control of an  
2 aircraft in flight.

3 **(g) A person justified in using force under this section does not**  
4 **have a duty to retreat.**

5 SECTION 6. [EFFECTIVE JULY 1, 2006] IC 34-30-23 and  
6 IC 34-51-2-20, both as added by this act, and IC 35-41-3-2, as  
7 amended by this act, apply only to a cause of action that accrues  
8 after June 30, 2006.

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